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July 8, 2003

The Honorable Roy Cooper
North Carolina Attorney General
Post Office Box 629
Raleigh, North Carolina 27602-0629

Re: Enforcement of the Crime Against Nature law and Soliciting Crime
Against Nature charges in light of Lawrence v. Texas.

Dear Roy:

As a former colleague in the North Carolina General Assembly, I have watched your career with great interest and enthusiasm. For the first time, however, I find that I must now write you on a matter of public interest and concern.

It has been nearly two weeks since the Supreme Court delivered its opinion in Lawrence v. Texas followed by a remand in the case of Limon v. Kansas. I believe that the vast majority of legal experts concluded that Lawrence effectively invalidated North Carolina's Crime Against Nature law with regard to sex between adults. (The law has a bestiality provision that probably was not affected by Lawrence.)

Unfortunately, some District Attorney and law enforcement officials have interpreted Lawrence in a very restricted manner which would leave the CAN law (and the attendant misdemeanor of soliciting to commit a crime against nature) largely intact. Under their operating theory, the Court merely stayed enforcement of the law in private residences.

I can appreciate your office's reluctance to issue an opinion on this matter. It is a complicated issue that requires proper consideration.

On the other hand, I know that it is not your intention, nor that of the state's elected

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District Attorneys, to violate the constitutional rights of any citizen. Nor do I believe there is strong sentiment for engaging in the kind of “massive resistance” to the Court’s directive that some southern states resorted to after *Brown v. Board of Education* in 1954.

Because the status of the law is unclear, it is imperative that responsible public officials offer clear and well-reasoned opinions. As the head of the state’s Justice Department, it falls on you to help clarify the situation to promote uniform and fair application of the law across the state. While I realize that the issue can be clarified by court rulings over time, it is not fair or just to prosecute people based on laws of dubious or doubtful validity until ordered not to do so.

I have attached a brief I have prepared as to why the CAN and SOLCAN laws cannot be constitutionally utilized in prosecutions not involving animals. The brief is attached in hopes that it will assist you and your staff in evaluating your position.

I realize that the demise of the CAN law may leave a serious void in the state’s criminal law with regard to public sex acts that do not currently fall under either the prostitution or indecent exposure laws. I also hope you will take the lead in urging the legislature to address that void so that prosecutors will not feel the need to try and utilize the constitutionally invalid CAN law to regulate such public activity.

I can appreciate the concern of local law enforcement authorities that the loss of the CAN statute leaves the state with no apparent law to cover sexual activity (not involving commerce or indecent exposure to a member of the opposite gender) in public places. The remedy, however, lies with the legislature, not with attempts to enforce a clearly unconstitutional statute.

I suggest that you ask the legislature to amend the prostitution statute to cover acts other than intercourse, amend the indecent exposure law to cover sexually oriented exposure to members of the same gender, and perhaps consider a “public sex acts” law applicable to all sexual expressions. None of these changes would be called into question by recent Supreme Court decisions.

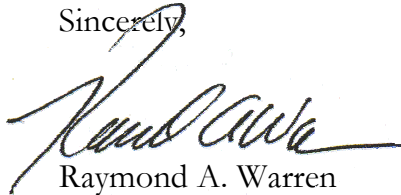
If time is of the essence, I suggest that local governments be encouraged to enact local ordinances to offer some regulatory protection in the interim.

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That is a far more reasonable approach than trying to informally transform the Crime Against Nature law to meet the requirements of the Constitution.

Thank you for your attention to this matter. If I can be of any further assistance do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond A. Warren". The signature is written in a cursive style with a large, sweeping initial "R".

Raymond A. Warren
RAW/lcc